

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
HASSAN KHAN, :

Movant, :

-against- :

ORDERUNITED STATES OF AMERICA, : 20-CV-945 (JSR) (KNF)
15-CR-804-1 (JSR)

Respondent. :

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KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

In a letter filed on February 3, 2021, the respondent requested that the evidentiary hearing scheduled for February 18, 2021, on the movant's 28 U.S.C. § 2255 motion, be adjourned. The respondent explained that the request was made because of "structural and pandemic-related challenges" that personnel at the Federal Bureau of Prisons (BOP) Fort Dix facility, where the movant is incarcerated, contend they will confront should the hearing proceed as planned via a video conference. The respondent, through the February 3, 2021 letter, has urged once again that the hearing be held in person and not via videoconferencing to address the concerns of the BOP personnel. To date, the movant has not responded to the request made by the respondent, although a reasonable time for submitting a response to the Court has elapsed.

The Court has previously communicated to the parties the serious health and safety dangers that would attend the movant, as well as BOP and United States Marshals Service personnel should the movant be transported interstate, in the current pandemic environment, to participate in an in-person evidentiary hearing. Those dangers will not be recited here, but they make it imprudent to conduct an in-person hearing at this time.

The Court has become aware that: 1) the video conference platform selected by BOP

personnel in consultation with the court's personnel, for use during the hearing, will not allow the movant and his counsel to confer privately during the hearing; and 2) the BOP personnel are unable to provide the movant either mobile or land line telephone service at the Fort Dix facility, during the hearing, to facilitate consultation by the movant with his counsel. The movant and his counsel must be able to confer privately during the hearing so that the movant can assist his counsel to ensure that: i) a full hearing record is developed; and ii) the hearing is fair. The inability of BOP personnel to provide the movant with telephone service during the hearing, so that he may confer with his counsel, militates against proceeding with the February 18, 2021 hearing. It is imperative that a fair hearing be held; therefore, the request by the respondent that the hearing be adjourned is granted. A telephone conference shall be held with counsel to the respective parties on May 5, 2021, at 11:00 a.m. to discuss whether circumstances have changed that will permit the hearing to be rescheduled for a date certain. Counsel shall use call-in number (888) 557-8511 and access code 4862532.

Dated: New York, New York
February 10, 2021

SO ORDERED:



KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE